IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No. 14853 of 2006(O&M)
Date of decision: December 4,2006

Ravish Kumar and others **Petitioners**

v.

The State of Haryana and others **Respondents**

Present: Mr. Sanjiv Gupta, Advocate for the petitioners.

Ms. Ritu Bahri, Deputy Advocate General, Haryana for respondents No.1 to 3.

Mr. Sanjay Bansal, Advocate for respondent No.4.

CORAM: Hon'ble Mr. Justice Adarsh Kumar Goel
Hon'ble Mr. Justice Rajesh Bindal

1. Whether Reporters of local papers maybe allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Rajesh Bindal, J.

The petitioners have approached this Court challenging notice dated 12.6.2006 (Annexure P.10) and summons dated 25.8.2006 (Annexure P.11), issued by respondents No.2 and 3 respectively seeking to recover the amount due against the firm- M/s Saraswati Rice & General Mills, Mullana (for short, `the firm'), as arrears of land revenue, from the partners of the firm.

The facts, as pleaded in the petition, are that the firm was constituted in the year 1987 by virtue of a partnership deed executed on 13.1.1987. Respondent No.4, who was the exclusive owner of land measuring 23 kanals 8 marlas, consisting of Khasra Nos. 59/9 and 83/22, killa Nos. 1, 2, 10, 2 and 2 in Patti Bhagararu-Mullana, agreed to contibute the same as her share in the new partnership firm. One of the conditions of the latest partnership deed dated 1.4.1995 entered into between the parties was that no partner shall hypothecate or alienate, in any manner, any property of the firm or raise any loan or create any liability in his/her individual capacity for personal purpose. The firm for the

purpose of setting up of the rice sheller raised loan from Haryana Financial Corporation, for which the mortgage deed was signed by the partners of the firm in its favour on 18.10.1987. In the said mortgage deed, in the schedule of mortgaged properties, it was mentioned as under:

> " SCHEDULE A
>
> IMMOVEABLE PROPERTIES OWNED AND HELD BY THE MORTGAGORS
>
> Land measuring 23 kanals 8 marlas building constructed and to be constructed thereon situate in village Mulana, Tehsil and District Ambala owned and held by the industrial concern and delineated in the plan thereto attached and bounded as follows:
>
> North: Kabristaan
>
> South: Kacha Rasta 33'
>
> East: Agricultural land of Satguru Nath
>
> West: Agricultural land of Bawa Singh Jaat
>
> together with appurtenant rights, tenaments and hereditaments as well as electric installations fixtures and fittings."

Further as per averments in the petition, the loan raised from the Haryana Financial Corporation inter-alia for construction of building and purchase of plant & machinery was repaid in due course by the firm. Even the benefits of deferment of payment of tax availed of under the Haryana General Sales Tax Act, 1973 (for short, `the Act') and the Haryana General Sales Tax Rules, 1975 were also repaid in time. The disputed recovery pertains to sale made by the firm in the course of export outside the territory of India against `H' form for the assessment years 1995-96 and 1996-97.

It is further pleaded that in 1997, a dissolution deed was executed between the partners vide which respondent No.4 became the sole proprietor of the firm and was to own all the assets and liabilities as on the date of dissolution. The said dissolution deed does not form part of the documents annexed with the

petition, as the same is stated to be not readily available with the petitioner. According to the petitioners, after the dissolution, the firm continued to function for a period of two years under the sole proprietorship of respondent No.4 through her son – Yogesh Goel and the surplus generated from the business of the firm during this period went to the account of respondent No.4 only. Petitioner No.1 was served with a notice dated 21.9.1999 for recovery of Rs. 3,16,383/- outstanding against the firm, being one of the partners, which was duly replied to by petitioner No.1 stating therein that he stood retired from the said firm in the year 1997 and all the assets and liabilities were taken over by the continuing partners. It was further stated in reply (Annexure P.4) that the firm has sufficient assets and recovery of sales tax due against the firm can be recovered from the assets of the firm.

Still further, it is pleaded that respondent No.4 after having come to know that the official respondents are proceeding to recover the arrears of sales tax from the firm or the partners thereof, sold land, consisting of 21 kanals 12 marlas (part of the land) owned by the firm to Smt. Santosh Kumari wife of Shri Prem Chand son of Shri Beni Parshad, resident of Mullana, District Ambala for a consideration of Rs. 3,65,625/- vide sale deed dated 28.9.1999 and building and machinery separately. Rest of the property was transferred by respondent No.4 in the name of her grand son by way of gift, mutation of which was duly entered in the revenue record. In the year 1999, a new firm in the name of M/s Gaurav Rice Mill was constituted, which is presently running the rice sheller in the same premises. It is further pleaded that against the assessment for the year 1996-97, it is respondent No.4 who had appealed against the order of assessment and got the case remanded back which was finally assessed on 20.3.2006 vide order Annexure P.9.

Finally, the contention is that after keeping quiet for about 6-7 years from the issue of first notice in September, 1999, the official respondents issued

notice dated 12.6.2006 to petitioner No.1 seeking to recover the amount of sales tax due against the firm for the years 1995-96 and 1996-97, which was followed by summons dated 25.8.2006 for recovery thereof as arrears of land revenue. The summons were issued only in the name of petitioner No.1 and not in the names of other partners who were allegedly there when the original partnership firm was constituted.

In reply to the writ petition, the official respondents submitted that the demand was created on account of purchase tax leviable on paddy, the rice procured out of which was sold to the exporter, in terms of the judgment of Hon'ble the Supreme Court in the case of Monga Rice Mills and others v. State of Haryana, (2004) 135 STC 549. The present petitioners are liable because when the liability was incurred, they were partners in the firm. The alleged dissolution deed is a result of collusion amongst the partners to defraud the State of its legitimate revenue. The alleged dissolution deed was never furnished to the answering respondents, as provided for under Section 58 of the Act. It is further pleaded that recovery notices have been issued to other partners also, namely, Shri Rajiv Kumar son of Shri Anand Sarup and Smt. Bimla Devi wife of Anand Sarup, who are residing at Shahbad Markanda within the jurisdiction of Deputy Excise and Taxation Commissioner, Kurukshetra. It is not disputed that registration under the Act was granted to the firm with respondent No.4, as one of the partners, besides five others. M/s Gaurav Rice Mill is stated to be a separate entity and is functioning separately under the Act. Receipt of reply (Annexure P.4) to notice (Annexure P.3) is denied. Summing up their submissions, the official respondents prayed for dismissal of the writ petition.

In her separate written statement, respondent No.4 admitted that 21 kanals 12 marlas of land was given by her to the partnership firm for carrying on the business of rice shelling in the year 1987. The aforesaid land was never transferred in the name of partnership firm by respondent No.4. The same was sold

by respondent No.4 in the year 1999. Sale of building constructed and plant & machinery errected by the firm by raising loan from Haryana Financial Corporation has not been denied. Another portion of the land was gifted by respondent No.4 to her grand son. It is further pleaded that respondent No.4 was served with notice dated 20.3.2006 and in response thereto, she deposited a sum of Rs. 2,53,055/- with the Assessing Authority on 3.7.2006. It is petitioners No.1 and 2, who are responsible for payment of the dues, as they had been given the power of attorney to work on behalf of the firm by all other partners.

Replications to the written statements have been filed and even rejoinder to the replication has also been filed by respondent No.4 reiterating the pleas taken by the respective parties in their pleadings.

We have heard Mr. Sanjiv Gupta, Advocate, learned counsel for the petitioners, Ms. Ritu Bahri, Deputy Advocate General, Haryana and Mr. Sanjay Bansal, Advocate, learned counsel for respondent No.4 and have perused the record.

The undisputed factual position, emerging from the pleadings of the parties which have been summed up, is that respondent No.4, while entering into a partnership firm for carrying on the business of rice shelling, had contributed the land measuring 23 kanals 8 marlas as her share money to the new partnership. The same land was mortgaged with Haryana Financial Corporation, as owned by the firm for raising loan, inter-alia for construction of building and purchase of plant & machinery. Though the petitioners claim that the said firm stood dissolved in the year 1997 has been controverted but carrying on of business of the firm by the respondent No.4 as sole-proprietor, after its alleged dissolution for subsequent two years, under the same name and style has not been specifically controverted by respondent No.4 in her written statement. The pleadings to that effect are extracted below:

"Pleadings of the petitioners

5. That after the induction of Smt. Bhagwan Devi Goel as sole proprietor, the same rice sheller, i.e., M/s Saraswati Rice and General Mills was operational for a period of two years and which was run by Smt. Bhagwan Devi Goel through her son Sh. Yogesh Goel. Even there was a Commission Agent Shop in the name of M/s Saraswati Traders which was also run by Sh. Yogesh Goel as proprietor. Thus all assets and liabilities were taken by Smt. Bhagwan Devi Goel and even the benefit for a period of two years were availed by Smt. Bhagwan Devi Goel and her son. Not only this even a Dryer Plant was also installed by Smt. Bhagwan Devi Goel in the same premises in the year 1987-88 which was operational for a period of two years and now the operation is being carried out by change of name by depicting the sale purchase and gift deed etc. in the name of M/s Gaurav Rice Mills.

Pleadings of respondent No.4

5. That the averments made and contention raised in para no.5 of the writ petition are admitted only to the extent that a dryer plant was installed in the premises of the firm in the year 1997-98, on account of business expediency."

As regards the dissolution of the firm in the year 1997 is concerned, the factum is disputed by respondent No.4 as well as the official respondents.

The pleadings of the parties to the effect that the rice sheller was set up on the land given by respondent No.4 as her contribution to the partnership firm by raising loan from Haryana Financial Corporation and the loan was repaid by the firm are not disputed. So the property, i.e., the land, building and machinery erected thereon belonged to the firm and was not the property of respondent No.4 in her individual capacity, even though the land continued to be recorded so in the revenue records. It is borne out from the record that in 1999, when respondent

No.4 sold 21 kanals 12 marlas of land to Smt. Santosh Kumari wife of Prem Chand (part of the land measuring 23 kanals 8 marlas) and gifted a part of the land to her grand son, proceedings for assessment and recovery under the Act was still pending for the period prior thereto.

Even if we do not find any force in the submission of learned counsel for the petitioners to the effect that the firm stood dissolved in the year 1997 and thereafter respondent No.4 took over the assets and liabilities of the firm for the reason that neither a copy of the dissolution deed has been placed on record by the petitioners nor the same was submitted with the Sales Tax authorities as required under Section 58 of the Act and further respondent No.4 having disputed the factum of dissolution, the same being disputed questions of fact, but still we find force in the argument of learned counsel for the petitioners to the effect that even if there were any dues against the firm, the same were required to be satisfied from the assets of the firm. Sufficient assets of the firm being available, the recovery of the amount due could very well be made from that. Respondent No.4 did not have any authority to transfer the assets of the firm in case those had not come to her by way of dissolution holding her responsible for all assets and liabilities as on the date of dissolution and thereafter. In any case, the transfers made by respondent No.4 are prima facie in violation of Section 59A of the Act, which provides that any charge created on the assets with an intention to defraud the revenue would be void unless the transfer is in good faith and for consideration. We do not record a final finding on this aspect in the absence of the transferee of the property. The relevant provision is extracted below:

> " **SECTION 59A**
>
> **Transfer to defraud revenue void**
>
> Where, during the pendency of any proceedings under this Act, any person liable to any tax or other dues creates a charge on or transfers, any immoveable property belonging to him in favour of any other person with the intention of defrauding any such tax or other dues, any such charge or transfer shall be void as against any

claim in respect of any tax or other dues payable by such person as a result of the completion of the said proceedings.

Provided that nothing in this section shall impair the rights of a transfereee in good faith and for consideration."

In the present case, undisputedly the property belonging to the firm was transferred by respondent No.4 during the pendency of proceedings against the firm. The effect thereof has to be considered and dealt with by the official respondents for recovery of the dues of the firm. However, the contention raised on behalf of learned counsel for respondent No.4 to the effect that transferees of the property of the firm, not being a party in the present petition, would require hearing before any action is taken against them carries weight.

Accordingly, while quashing the impugned notice Annexure P-10 , we remit the case back to the authorities to proceed for recovery of the amount due in accordance with law after hearing persons concerned and dealing with the objections raised.

The writ petition is disposed of in the manner indicated above with no order as to cost.

(RAJESH BINDAL)
JUDGE

December 4, 2006 **(ADARSH KUMAR GOEL)**
renu **JUDGE**